IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL FIRST APPEAL No. 21 of 2005

D.P.TEXTILES
V/S
GYANENDRA KUMAR

Mr. M.S.RAJPUORHIT, for the appellant / petitioner

Date of Order : 11.4.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

The only contention advanced is, that Pali Court had no territorial jurisdiction to entertain the present suit, and therefore, the decree is wholly without jurisdiction, and is liable to be set aside.

I have considered the submission, and have perused the record, which was ordered to be requisitioned vide order dated 27.1.2005, and has been received.

It transpires that the suit was filed as a summary suit under Order 37, and in para-11, it has been pleaded, that the entire transaction took place in Pali, and the payment of cheque was to be received at Pali, and therefore, Pali Court had territorial jurisdiction. Prior to that, in para-4, it was pleaded, that as per direction of the defendant, the cheque was presented by the plaintiff in his Pali Bank (Urban Cooperative Bank, Pali), which was returned dishonored. In the written-statement in paras-3, 4, and 5, it was pleaded, that the cheque is forged, and has been interpolated by the plaintiff. Then in para-11, it was pleaded that cause of action does not arise in Pali, rather it arises in Delhi. On this controversy, issue No.4 was framed. The plaintiff appeared in the witness-box as P.W.1, Gyanendra Kumar, and has clearly deposed, that the orders used

to be received on telephone, the cheque was received by him in Pali, the plaintiff has no branch, or establishment, in Delhi. The goods used to be dispatched through travels, the defendant had come to his office 3-4 times, and that the payment used to be received in Pali. Significantly, nothing has been suggested to him in cross examination that he had forged the cheque, or that the cheque was never given by the defendant, of course, on suggestion, the plaintiff had answered, that at the time when he received the cheque, it was in proper condition, and that the case regarding disfiguration of the cheque is still going on, but then, nothing has been suggested about the cheque being forged one. As against this, the defendant appeared in the witness-box as D.W.1, Alka Kalani, and has deposed, that she is a sleeping partner, but then, she has also deposed, that she never used to sign on any blank cheque. Then in cross-examination, she has admitted that the original cheque bears her signature as A to B, and that this cheque, Ex.1 was issued for her own firm (on behalf of the defendant-firm). Then what is significant to note is, that nothing has been deposed by her with regard to issue No.4.

From the record, it further transpires, that the plaintiff's evidence was closed on 7.8.2003, and the case was fixed for defence evidence on 29.8.2003, on which date, it was pointed out that original cheque would be required, and therefore, that should be summoned from the criminal Court, whereupon the Court ordered, that the defendant should furnish the affidavit by way of examination-in-chief within 10 days after giving copy to the plaintiff's counsel, and the photostat copy of the document, desired to be proved, may be produced, and the case was fixed for cross-examination on 11.9.2003. That day adjournment was sought, then the case was fixed on 19.9.2003, on which date, the examination-in-chief was recorded, instead of affidavit, and for want of original cheque, the cross-examination was reserved, the cheque however was ordered to be summoned, and the case was fixed on 27.9.2003, directing that the defendant should examine all her other witnesses, as may not be relating to cheque. On 27.9.2003 again time

was sought by the defendant, and the defendant was directed to keep all her witnesses on the next date, being 15.10.2003. Thereafter, the case was adjourned on three occasions, either on account of the Presiding Officer being on leave, or the date being declared holiday, or the like, and it is, in this sequence, that on 18.11.2003, the cross-examination of the defendant, Alka was completed, and the counsel for the defendant did not desire to produce any other evidence, and therefore the evidence of the defendant was closed. Thus, it is clear that the defendant has neither led any evidence, nor desired to lead any evidence, on issue No.4. In this state of affairs, there is no reason, not to believe the plaintiff's version, about the cheque having been given to him at Pali, so as to give rise to the cause of action at Pali.

Thus, I do not find any force in the appeal. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

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